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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,998	01/28/2004	Rock Nolet	9555.141US01	5029
23552	7590	04/20/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			LHYMN, EUGENE	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/766,998	Applicant(s) NOLET ET AL.	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/28/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overholt et al. (US 6405888 B1) in view of Bodkin (US 2552929). With respect to claim 1, Overholt et al. discloses the following:

- A bottom piece having opposite side edges and opposite end edges (Fig. 2, item 15);
- A pair of opposite side pieces, each having an upper edge and a lower edge, said lower edge hingedly connected to an associated side edge of said bottom piece (Fig. 2, items 36 & 34);
- A pair of opposite end pieces, each having an upper edge and a lower edge, said lower edge being hingedly connected to associated end edge of said bottom piece (Fig. 2, items 44 & 46);
- Latching means for securing said side pieces and said end pieces to one another in a vertical condition so as to form an open five-piece container (Fig. 6a-6c);

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- Said upper edges of said side pieces having lodging means receiving opposite end portions of said opposite end of said bail bar arrangement, wherein the lodging means are the upper edge portions of each sidewall, 36 & 34, which are clearly capable of receiving end portions of a bail bar arrangement, which is addressed below;

However, Overholt et al. fails to disclose the following:

- A pair of bail bar arrangements having one end hingedly connected to the upper edge of said end pieces and an opposite end;
- Said bail bar arrangements are pivotable between a first position wherein said bail bar arrangements rests substantially horizontally on said side pieces to reinforce said side pieces and a second position substantially parallel to outer faces of said end pieces.

Nonetheless, Bodkin teaches a container having the following:

- A pair of bail bar arrangements having one end hingedly connected to the upper edge of said end pieces and an opposite end (Fig. 1, item 21);
- Said bail bar arrangements are pivotable between a first position wherein said bail bar arrangements rests substantially horizontally on said side pieces to reinforce said side pieces and a second position substantially parallel to outer faces of said end pieces, as shown in Fig. 1, which shows one of the bail's being in a first position, resting horizontally on said side piece, and the opposite bail

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being in a second position disposed in a position parallel to the outer face of the end wall.

Bodkin has such a bail configuration to facilitate stacking of multiple containers, wherein Overholt et al. discloses the need for stacking the containers (Col. 1, Lines 50-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add the bail configuration of Bodkin to the containers of Overholt et al. so as to facilitate stacking of containers of Overholt et al.

With respect to claim 2, to the degree that the claim is understood, Bodkin teaches the bail configuration consisting of two parallel arms 22 having one end hingedly connected to said end piece (Fig. 2, pintle assembly) and an opposite end integral with a transverse rod 21 having opposite ends engaged in said upper edges of said side pieces.

With respect to claim 4, Bodkin teaches the ends of said arms pivotally connected to said end pieces being configured to be received in recesses (Fig. 4, item 18) in the upper edges of said end pieces through a snap-in engagement, wherein the pivot member 18 is clearly disposed on the upper edges of the endwall of the container, wherein the Fig. 3, item 23 shows the ends of the arms of the bail being in a snap engagement with said recess wherein for the ends to be placed in said recesses, a snapping effect inherently occurs.

With respect to claim 5, Overholt et al. discloses the following: said side pieces and said end pieces are inwardly pivotable to lie in planes parallel to said bottom piece (Fig. 3); said bail bar arrangement being pivotable to lie in a plane substantially parallel to the plane of said end pieces when folded horizontally over said bottom piece; said bail bar arrangements extending in the prolongation of said end pieces, wherein Overholt et al. as modified in claim 1, to have a bail bar arrangement, would clearly render the bail bar arrangement being pivotable to lie in a plane substantially parallel to the plane of said end pieces when folded horizontally over said bottom piece, since the bail bar arrangement is associated with the end wall of the container of Overholt et al.

With respect to claim 6, Overholt et al. discloses the container being formed of plastic (Col. 5, Lines 35-38).

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Overholt et al. in view of Bodkin as applied to claim 1 above, and further in view of Knox (US 2519666). With respect to claim 3, Overholt et al. as modified above discloses the claimed invention except for the upper edges of said side pieces defining a recess configured to provide a snap-in engagement of said opposite ends of said rod. However, Knox teaches a container and bail wherein the upper edges of said side pieces define a recess configured to provide a snap-in engagement of said opposite ends of said rod, as shown in Fig. 1, item 20, thereby providing a secure holding means for the bail. Therefore, it would have been obvious to one of ordinary skill in the art at

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the time of the invention to add a recess in the upper edge of the sidewall of Overholt et al. as taught by Knox so as to provide a secure holding means for the bail.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER